

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: QWEST CORPORATION, f/k/a U S WEST COMMUNICATIONS, INC. | DOCKET NO. TF-00-250 (RPU-98-4) |
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**ORDER CONFIRMING ORIGINAL ORDER AND
DENYING OBJECTIONS TO TARIFF**

(Issued May 10, 2001)

PROCEDURAL HISTORY

The procedural history of this case was stated in an order issued on December 21, 2000, and will not be repeated in this order. On December 21 and 22, 2000, the Board issued orders addressing the issues briefed by the parties in this case. In the orders, the Board found that a decrease for 1999 under the Qwest price plan should be calculated based upon the Gross Domestic Product Price Index (GDPPI) values in Table 7.1 as published on the Bureau of Economic Analysis website on October 29, 1999. Using the October 29, 1999, GDPPI, the Board found that the rate decrease for 1999 was 1.21 percent. In the order, the Board found that the price plan did not require that Qwest reduce basic communications services (BCS) prices across-the-board. The Board found that the language of the price plan allowed Qwest to select which BCS rates to reduce, subject to Board review.

As part of the decision concerning the proper calculation under the price plan, the Board also addressed the November 3, 2000, Qwest filing that proposed to offset the required decrease by a prior volume discount for Centrex Plus. The Board rejected the Centrex Plus offset, finding that the proposed offset was not timely filed, foreclosing objections by the other parties.

On December 29, 2000, Qwest filed an application for rehearing and two sets of proposed tariffs in compliance with the Board's orders. In the application, Qwest asserts that the Board improperly denied the offsetting of the price plan rate decrease by the Centrex Plus volume discount and stated that it filed the two sets of proposed tariffs to comply with whichever decision the Board reached on the application for rehearing.

On January 8, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an "Objection To Tariff." On January 10, 2001, Consumer Advocate filed an "Application For Rehearing" asserting that the Board incorrectly interpreted Qwest's price regulation plan. Consumer Advocate specifically, among other assertions, renews its contention that the last published GDPPI before the anniversary date of the plan, November 7, 1999, was the one published in the printed October 13, 1999, U.S. Department of Commerce Survey of Current Business, and the contention that the price plan requires Qwest to reduce rates across-the-board.

The Board, on January 29, 2001, issued an order granting the applications for rehearing. The Board indicated in the order that it would also address the objections of Consumer Advocate to the proposed compliance tariffs. On February 2, 2001, Consumer Advocate filed a motion requesting that the Board set the factual issues in this docket for evidentiary hearing.

The Board on February 12, 2001, issued an order establishing a procedural schedule for prefiled testimony, a hearing, and briefs. A hearing for the purpose of receiving testimony and cross-examination of all testimony was held as scheduled on March 6, 2001. The Board set out six issues to be addressed by the parties in their prefiled testimony and briefs. On March 16, 2001, the parties filed briefs. The Board's decision with regard to each of the issues is set out below.

APPLICABLE STATUTES AND PRICE PLAN PROVISIONS

The relevant statutory language and price plan language used by the Board in consideration of the issues is set out for reference. These statutory and price plan references provide a necessary background for an analysis of the language in the Qwest price plan and how it affects the issues raised on rehearing.

Iowa Code §§ 476.96.1 and 476.97.3 (5) and (6).

476.1 "Basic communications service" includes at a minimum, basic local telephone service, switched access, 911 and E-911 services, and dual party relay service. The Board is authorized to classify by rule at any time, any other two-way switched communications services as basic communications services consistent with community expectations and the public interest.

476.97.3 (5) The plan shall provide for both increases and decreases in the prices of basic communications services reflecting annual changes in inflation and productivity. Prior to January 1, 2000, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure, and two and six-tenths percentage points for a productivity measure. On or after January 1, 2000, the board by rule may adopt current measures of inflation and productivity.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than 2 percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

Price Plan

III BASIC COMMUNICATIONS SERVICES

A. Definition. Basic Communications Services ("BCS") are those services defined by statute as BCS that are shown on Exhibit A and will include all other services reclassified by the Board under Iowa Code Section 476.96.

D. Price Increases. U S WEST may increase on an annual basis through the year 2000, any BCS price, except for intrastate-switched access service, by a percentage amount equal to that amount which the annual inflation rate exceeds a 2.6% annual productivity factor. After the year 2000 the annual inflation rate and productivity factor may be modified by the Board.

1. The inflation rate shall be the annual percentage change (the value of the index in the most recent quarter divided by the value of the index for the quarter in the previous year minus one) in the Gross Domestic Product Price Index (GDPPI) constructed using chain-type annual weights as published in the most recently available monthly edition of the U.S. Department of Commerce's Summary of Current Business, Table 7.1.

E. Price Decreases. U S WEST can decrease any BCS price to any lawful price, upon a showing that the requirements of IAC 38.5(4) are met. Any such decrease

may be accumulated and used to offset a decrease or portion thereof required during the following 12 months.

U S WEST shall decrease its BCS price in a percentage amount equal to the amount that the Productivity offset exceeds the annual rate of inflation (determined in accord with D. above) on an anniversary date of the effective date of this Plan. If the required decrease is less than 2%, the reduction may be deferred for one year. Any required price decrease can be offset by a price increase, which would have been permitted during the preceding twelve months.

REHEARING ISSUES

- 1. Which Gross Domestic Product Price Index is "published in the most recently available monthly edition of the U.S. Department of Commerce's Survey of Current Business, Table 7.1" prior to November 7, 1999?"**

On December 21, 2000, the Board ruled that Qwest's November 8, 1999, filing contains the most recent GDPPI prior to the anniversary date of the plan. This was the GDPPI obtained from the Bureau of Economic Analysis website.

On November 8, 1999, Qwest filed a revised price plan reduction based upon an inflation rate taken from the website of the Department of Commerce's Bureau of Economic Analysis that was available to the public in a news release on October 28, 1999, and in Table 7.1 on October 29, 1999. Qwest Exhibit 1 shows the GDPPI values from the website. Consumer Advocate contends that Qwest should have used the GDPPI values from the printed copy of Table 7.1 in the Survey of Current Business sent to the printer on October 13, 1999. Because of the change in the base year from 1992 to 1996 in October 1999, Table 7.1 was not included in the printed copy of the Survey of Current Business sent to the printer in November 1999. The

GDPPI values from Table 7.1 provided on October 29, 1999, on the website, were reflected in Table 5 of the November Survey of Current Business.

The GDPPI values found on the website, regardless of the month, are the same as those printed subsequently in the hard copy. The decision concerning this issue turns on the question of whether Table 7.1 on the website meets the requirements of paragraph III D. The Board finds that the important question is whether the values found in Table 7.1 are the most recently published and not in what format of the Survey of Current Business they are published.

Iowa Code § 476.97(5) does not provide specific guidance on this question, except to state that the GDPPI must come from the federal government. Additionally, the language in the price plan does not limit the term "published," to a hard copy, but does indicate the more specific requirement that the GDPPI must come from the most recently available Table 7.1 of the Survey of Current Business.

The focus of the price plan is on Table 7.1 and not in the format in which it is published. The dictionary definition of "published," includes "to make generally known" and "to disseminate", as well as "to print." The Board finds that the language in the plan is only ambiguous if the word "published" is interpreted to limit Table 7.1 to the hard copy the Survey of Current Business. The Board does not believe that the words in the plan are so restrictive. If the GDPPI values are "published," made "available to the public," or "disseminated," and they are prepared by the Bureau of Economic Analysis and put into Table 7.1 of the Survey of Current Business, then

they meet the provisions of the price plan. Consumer Advocate's intent may have been to limit "published" to the printed hard copy of Table 7.1, but the language in the price plan is not so specifically limited.

The intent of the statute and the Qwest price plan is to allow a local exchange carrier to adjust rates based upon an inflation factor and a productivity factor. The purpose of the adjustment is to, as closely as possible, have prices track the overall economy. To track economic conditions the information used in calculating the inflation factor should be the latest, or most recently available information, as long as it is published by the federal government in Table 7.1. The use of Table 7.1 from the website is the most recently available Table 7.1, therefore it is more reasonable to use that information, rather than go back to the previous month's information as proposed by Consumer Advocate.

Consumer Advocate Exhibit 101, Schedule B, is a copy of the March 1998 Survey of Current Business. On page 19 of the exhibit it states that the information from the national income and product accounts, including those in Table 7.1, are prepared by the BEA and available on the BEA website, with selected articles from the Survey of Current Business, the website of the Department of Commerce, and in the Survey of Current Business.

The correctness of using the October 29, 1999, website values is supported by the circumstances surrounding the differences between the hard copy Table 7.1 published October 13, 1999, and the electronic version published October 29, 1999.

Qwest Exhibit 1 contains the October 28, 1999, BEA news release that explains that between the development of the GDPPI in the October 13, 1999, hard copy and the development of the GDPPI on October 29, 1999, the Bureau of Economic Analysis updated the base year from 1992 to 1996. Thus the use of the October 29, 1999, Table 7.1 includes the updated base year values, while the hard copy from October 13, 1999, Table 7.1 includes values based upon outdated information. The Board finds that the evidence supports its decision in the December 21, 2000, order on this issue. The calculation of the inflation factor under the Qwest price plan for 1999 is thus 1.21 percent.

2. Is the CentrexPlus rate reduction one of the Basic Communications Services that can be offset against a required rate reduction under the provisions of the price regulation plan?

The Board in its December 21, 2000, order found that the proposed Centrex Plus volume discount offset was not timely filed and therefore Qwest could not offset the required reduction by the Centrex Plus decrease. By granting rehearing the Board has removed the issue of the timeliness of the filing and is now presented with the issue of whether the rate change made by Qwest, and approved by the Board in August 2000, is a rate decrease as contemplated by the first sentence of the first paragraph of section III E of the price plan.

There seems to be no question that Centrex Plus, the network access portion, is one of the BCS agreed to under the plan. The question is whether the type of rate reduction that was made to Centrex Plus should be considered for the offset. Qwest

describes the reduction in its July 7, 2000, filing, as introducing "a volume price option for non-blocked Centrex Usage." The volume discount is described as "an additional pricing choice, in addition to the currently offered three step pricing structure."

In response to a question from the Board, Qwest's witness explained the change in Centrex Plus rates as a change to the rate structure, a simplification, and not a new rate. The witness testified that this change did not exist in the price plan at the time the plan was adopted. The witness also testified that the new rate required a new USOC number because the billing system would not mechanically account for the decrease without the new number.

The Board finds that this part of the plan is limited to the services, rate structure and specific rates that existed when the plan was approved. The first paragraph of section III E allows Qwest to "decrease any BCS price." The Board believes that the intent of this language is to allow the decrease of any then-existing basic communications service price, but it does not allow Qwest to "simplify," or in effect restructure rates and then use a resulting decrease as an offset.

Qwest Exhibit 5 is a copy of the Qwest tariff sheet that contains the price structure for Centrex Plus, including the volume discount. The exhibit shows that when the price plan was approved Centrex Plus service had three separate prices based upon the number of lines the customer purchased. The rates applied for each Centrex Plus station line and the count was separate for each customer location. In

the tariff, 1-20 Centrex Plus lines had a monthly rate of \$31.04. 21-50 Centrex Plus lines had a monthly rate of \$29.10. For 51 and above the monthly rate was \$2.91. These three rates had the same USOC.

The new rate, also found in Qwest Exhibit 5, as shown on the proposed tariff sheet filed July 7, 2000, does not affect the three then existing prices, but as Qwest states in its cover letter, "This newly proposed price option will give customers an additional pricing choice, in addition to the currently offered three step pricing structure." It seems to be clear that the volume discount is not a decrease of any of the existing three prices but is a new rate for a new type of service offering. The proposed tariff sheet explains that the volume discount is available for a customer that has in service more than 50,000 Centrex Plus station lines over a four month period beginning April 1, 2000, and the customer must maintain at least 10,000 Centrex Plus station lines following the four-month period. The volume discount has a new USOC number, and a rate of \$4.25. The Board finds that this is a completely new type of service option for Centrex Plus and is not a decrease of a basic communications service price, or prices under the provisions of the price plan, and should not be offset against the required decrease.

3. Whether a required rate reduction under the price regulation plan can be applied to specific Basic Communications Services rates or must be across-the-board to all rates.

The Board in the December 21, 2000, order found that Qwest could reduce rates selectively rather than across-the-board. The Board found that the language in

the second sentence of the first paragraph of section III E to give meaning to the word "accumulated" requires the calculation of the revenue effect of rate decreases under the paragraph. This in turn indicates that reductions under the second paragraph are not limited to a percentage decrease in rates, but can be reductions in revenue for selected BCS. The Board stated that it retained the right to review proposed reductions to determine whether they are lawful. The Board on rehearing is again faced with this issue.

Iowa Code §§ 476.97.3(5) and (6) establish the basic requirements for a price plan. From the provisions of the statutes it can be seen that the legislature contemplated that both increases and decreases would be provided for in a price regulation plan. For both increases and decreases the statute establishes that the inflation rate will be measured against an established productivity rate and the resulting percentage will be used to either increase rates or decrease rates. The statute is silent on how decreases under the plan are required to be implemented, but the statute does allow any required decrease to be deferred for one year, if the decrease is less than 2 percent.

The Qwest price plan provides for both increases and decreases. The language in section III D of the price plan is similar to that in the statute for increases. The language in section III E has some significant differences from the statutory language concerning decreases.

The first paragraph of section III E must be analyzed separately to determine if the meaning is clear or if it is ambiguous and requires further interpretation. The intent of the first sentence of the first paragraph is clear. Qwest can decrease "any BCS price" if the imputation requirements of 199 IAC 38.5(4) are met. There is the problem of the plan defining "basic communications services" ("BCS") in the plural rather than in the singular as the statute does. This though does not change the meaning of the first sentence.

The second sentence of the first paragraph states that any "such" (referring to BCS price) decrease may be "accumulated" and "used to offset" a required decrease. The rules of statutory construction presume that the meaning of these words were known, and they were intended to be used. Statutory construction presumes that every word was intended for some useful purpose and that some effect is to be given to each word.

Consumer Advocate has argued very strenuously that the intent of the price plan and the language in section III E is to allow Qwest to only offset any mid-year decrease up to the percentage of the required decrease and to require across-the-board decreases. Consumer Advocate's witness on this issue does not specifically address the use of the term "accumulated" in his testimony, but instead argues that it would not be a good policy to allow a company to make selected reductions based upon revenue decreases. On cross-examination he interprets "accumulated" to

mean the offsetting of a mid-year decrease of a selected rate against any required decrease.

Consumer Advocate provides an example of this interpretation of the term "accumulated." This example is that Qwest may accumulate the percentages of more than one decrease for a basic communications service during a 12-month period, for purposes of offsetting a required decrease against that service.

The Board finds that Consumer Advocate's interpretation does not provide a logical and reasonable interpretation of the term "accumulated." Consumer Advocate's interpretation does not give effect to the term and the price plan could have achieved the same result as that supported by Consumer Advocate without using the word "accumulated."

To give meaning to the term "accumulated" the term must address the situation where Qwest decreases the prices of more than one basic communication service during the 12-month period. For example, Qwest might reduce one service price by 1 percent, a second service price by 2 percent, and a third service price by 3 percent. Under the normal definition of "accumulated" which is "collected," these percentages should be collected together in some way and then used to offset a required decrease. The most logical way would be to collect the decreases by some common denominator, i.e. revenue, and then offset them as a whole against the revenue calculation of a required decrease. This is the interpretation made by the Board in the December 21 order.

Once the plan is interpreted to allow the calculation of the revenue effect of a required decrease, then Consumer Advocate's position on across-the-board decreases is undermined. Consumer Advocates position is also undermined by the necessity of its witness to add an "s" to the word "price" in the first sentence of the second paragraph. The sentence reads in the plan as "U S WEST shall decrease its BCS price in a percentage amount." BCS is defined in the price plan as basic communications services. The witness proposed to change the wording to "U S WEST shall decrease its BCS prices in a percentage amount...."

The witness testified that he added the "s" to "price" because it did not make any sense to talk about Qwest reducing its BCS (plural) price (singular). This is true if you accept that the plan requires across-the-board decreases. The words do make sense if you interpret the language, as Qwest does, to allow selected decreases up to the overall required decrease of Qwest's basic communications services price. Additionally, Qwest contends that it would not have agreed to reduce any of its rates that were below cost, as would be required by an across-the-board decrease. The Board finds this argument to be persuasive, especially if the term "accumulated" is to have meaning.

The Board recognizes that the differences in interpretation between Consumer Advocate and Qwest are the clash of two different approaches to the policy question of what was the purpose of the price plan statute. Qwest made reference to Iowa Code § 476.95(3) contending that the Board was required to move rates toward cost

and that it has some rates, including residential service, that are now below cost.

Qwest then argues that an across-the-board decrease would move those rates even further below cost. Qwest though does not provide any specific cost evidence that a 1.41 percent or 1.21 percent across-the-board decrease would result in prices being moved below cost.

Consumer Advocate supports the policy that the statute is designed to ensure that any efficiencies in Qwest operations are to be returned to the ratepayer across-the-board as a substitute for a full rate case. Consumer Advocate does not agree that residential rates are below cost, and argues that allowing selective reductions would allow Qwest to rebalance its rates, which Consumer Advocate claims the statute was never intended to accomplish. Such rebalancing could be viewed by some as discouraging competition, which runs counter to the policy statement in Iowa Code § 476.95(2), although the record does not provide specific evidentiary support for this conclusion either.

The Board finds that the interpretation of the Qwest price plan made in the December 21, 2000, order is still the more credible interpretation of the language in the plan. The Board's decision gives meaning to the term "accumulated" and to the singular use of the word "price" in section III E. The Board's decision is consistent with the statute, and with the decision in a similar case under the statutory price plan involving GTE Midwest Incorporated, Docket Nos. TF 95-367 and TF 99-313.

TARIFF OBJECTION ISSUES

1. Was the proposed reduction of two of the three rates for business-measured service authorized under the provisions of the price regulation plan.

The Board's decision that the price plan allows Qwest to decrease selected rates to achieve the overall required decrease resolves this issue. Qwest has proposed to reduce two of three rates for its business-measured service to implement the decrease. The Board approved these decreases in the December 21, 2000, order.

2. Were the July 2000 line quantities the proper line quantities to use in the calculation for the required rate reduction under the price regulation plan?

Qwest in its proposed tariffs used line quantities from July 2000. This issue is not briefed by Consumer Advocate. The use of the line quantities from July 2000 is reasonable.

3. Should interest be paid on the required rate reduction that was due to customers on November 7, 2000?

The Board finds that there is no specific statutory authority in Iowa Code § 476.97 for the calculation of interest on a retained reduction. There is also no provision for interest in the price plan. The Board therefore finds that interest is not required to be paid on the retained decrease.

SUMMARY

The Board finds that its December 21, 2000, order, using the October 29, 1999, website Table 7.1 and approving decreases to selected rates, should be

confirmed. The required decrease is 1.21 percent for 1999 under the Qwest price plan. The Board finds that the volume discount for Centrex Plus is not a BCS price decrease under the price plan, and therefore should not be offset against the required decrease. The Board finds that the evidence does not support the objections to the tariff raised by Consumer Advocate.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The substantive claim in the "Application for Rehearing" filed by Qwest Corporation on December 29, 2000, is denied.
2. The substantive claims in the "Application for Rehearing" filed by Consumer Advocate Division of the Department of Justice on January 10, 2001, are denied.
3. The objections to the compliance tariffs filed by the Consumer Advocate Division of the Department of Justice on January 8, 2001, are denied.
4. The proposed compliance tariffs filed by Qwest Corporation on December 29, 2000, showing an offset for a CentrexPlus decrease are rejected.
5. The proposed compliance tariffs, identified as TF-00-250, filed by Qwest Corporation on December 29, 2000, reflecting an annual decrease in revenue of \$2,757,321, are approved to be implemented over the next monthly billing cycle within the next 30 days.

6. Qwest Corporation shall make the refund of amounts in excess of the approved rates retroactive to November 7, 2000.

7. Qwest Corporation shall file a report showing the implementation of the refund within 30 days after the refund is completed.

UTILITIES BOARD

/s/ Allan T. Thoms

DISSENT IN PART AND CONCURRENCE IN PART OF BOARD MEMBER

SUSAN FRYE

I respectfully dissent from this order with regard to the decision on Application For Rehearing issue 3 and Tariff Objection issue 1. The dissent is based upon an analysis of the legislative intent of Iowa Code § 476.97. As a result of the decision of the majority, Qwest will be allowed to decrease the rates for selected basic communications services, thus rebalance its rates, which is contrary to the basic intent of Iowa Code § 476.97 and the majority's own interpretation of the price plan in this order. The statutory provisions that establish the parameters for price plans are based upon macroeconomic indicators, productivity, and the inflation rate. Changes in these indicators are made in percentages. Therefore increases and decreases should follow the indicators by an equal percentage to all Qwest basic communications services.

One of the primary purposes of the price plan statute is to establish procedures for reducing the regulatory oversight of rate of return regulation while still allowing a company to maintain its return on equity through rate increases and decreases based upon inflation and productivity. The intent of the statute that these increases and decreases be accomplished across-the-board is evidenced by the requirement that the company is required to initially reduce all rates by 3 percent as a prerequisite to adopting a price plan. Iowa Code § 476.97(3)"a"(4). The use of macroeconomic indicators and initial across-the-board decrease indicates the

statutory intent that increases and decreases under a price plan are to be applied to all rates by the same percentage; price changes should not be based upon any individual rate cost based analysis.

Additionally, the majority misemphasized the word "accumulated" found in the first paragraph of section III E of the price plan. The evidence indicates that both Qwest and Consumer Advocate agreed to the language in this paragraph based upon their own interpretation of the term. Even though in this instance a decision on the interpretation of the term "accumulated" will have no practical effect, it is important to make the correct interpretation so that future mid-year decreases are treated appropriately.

The term "accumulated" is used in the statute in describing permitted increases under the statute. Increases are not required to be implemented, but they may be implemented, or deferred and accumulated over a three-year period. The use of the term "accumulated" in this context clearly refers to collecting the permitted percentage increases and implementing them as a final percentage, not to exceed 6 percent. Decreases under the plan are required to be implemented, but may not be deferred or accumulated, except that decreases of less than 2 percent may be deferred for one year. The use of this term is similar to its use for increases.

The Qwest price plan is consistent with the statutory language for increases and the second paragraph of section III E is consistent with the statutory language for decreases. The failure of the first sentence of the second paragraph of section III E

to have an "s" on the word "price" is not significant. The problem in interpreting the plan comes with the attempt to determine what was intended by the language in the first paragraph of section III E, and how it relates to the language concerning required decreases in the second paragraph.

The Board in its December 21 order found that the first paragraph allowed selected decreases and the term "accumulated" in the second sentence of the first paragraph required the calculation of the revenue effect of the decrease, and that accumulated revenue would then be offset against the revenue decrease that would result from the required decrease. This finding was in error.

Consumer Advocate has argued strenuously that the intent of the price plan and the language in section III E is to allow Qwest to only offset any mid-year decrease up to the percentage of the required decrease. While Consumer Advocate's interpretation of the price plan is consistent with the statute, Consumer Advocate has not adequately addressed the use of the word "accumulated" in the second sentence of the first paragraph of section III E.

The first paragraph of section III E does not reflect statutory language and cannot be interpreted based upon the interpretation of the statutory language. As found by the majority, the intent of the first sentence of the first paragraph seems to be clear. Qwest can decrease "any BCS price" if the imputation requirements of 199 IAC 38.5(4) are met.

The second sentence of the first paragraph states that any "such" (referring to BCS price) decrease may be "accumulated" and "used to offset" a required decrease. As indicated by the majority the rules of statutory construction presume that the meaning of these words were known, and they were intended to be used. Statutory construction presumes that every word is intended for some useful purpose and that some effect is to be given to each word. However, this presumption must be viewed in light of other factors. Here a review of different examples of how the word "accumulate" could be used in the sentence demonstrates that the term is ambiguous, and possibly superfluous.

Consumer Advocate provides an example of its interpretation of the term "accumulated." This example is that Qwest may accumulate the percentages of more than one decrease for a basic communications service during a 12-month period, for purposes of offsetting a required decrease against that service. However, Consumer Advocate's interpretation does not explain the situation where Qwest decreases the prices of more than one basic communications service during the 12-month period. For example, Qwest might reduce one service price by 1 percent, a second service price by 2 percent, and a third service price by 3 percent. Under an acceptable definition of "accumulated," which would be "collected," these percentages should be collected together in some way to then use them to offset a required decrease. How then does one collect them? One way would be as a bundle of twigs, in which they each offset independently against the required

decrease. Another way would be that the decreases are collected by some common denominator, e.g. revenue, and then offset as a whole against the required decrease. The price plan is not clear on which interpretation is intended.

This ambiguity could be resolved either by interpreting the sentence as Qwest does and turning the accumulated decreases into revenue, or as Consumer Advocate does and treating the decreases as separate, and offsetting them individually. In my opinion, there is a third solution to this ambiguity, which finds that the use of the term "accumulated" is to duplicate or parallel the use of the term in the statute.

This latter interpretation is the most reasonable and it is consistent with the statute. The statute establishes the calculation of the inflation rate as a percentage, and of the productivity factor as a percentage. Any increases based upon the comparison of the inflation factor and the productivity factor would then be made by percentages. Decreases are then discussed as required, and arguably are to be by percentages across-the-board. The use of the term "accumulated" in the second sentence of the first paragraph of section III E of the price plan, then, provides no additional requirements regarding the offsetting of the selected mid-year decreases. This interpretation is consistent with Consumer Advocate's intent even though it did not provide the analysis.

Qwest makes the argument that it has some rates that are below cost, and that Iowa Code § 476.95(3) requires the Board to move prices toward cost.

However, Qwest's reliance on 476.95(3) is misplaced. The price plan is a substitute for cost of service rate of return regulation, and is not related to the removal of subsidies and the movement of prices toward costs.

The Board used Docket No. TF-99-313 as precedent for interpreting the price plan to allow selected decreases under the Qwest price plan in the December 21, 2000, order. The Board allowed GTE Midwest Incorporated (GTE), in Docket No. TF-95-367, to calculate annual revenues for some services and to reduce revenues for selected BCS services. Then in Docket No. TF-99-313 the Board allowed GTE to apply a required decrease to only rural zone rate additives. The dockets are distinguishable in both fact and law. A review of the dockets shows that the rate decreases approved by the Board for GTE were pursuant to the statutory price plan established in Iowa Code § 476-97.11, and the language in that section is sufficiently different to distinguish it from the Qwest price plan.

Based upon the above analysis, required decreases under the guiding statutory framework, and the Qwest price plan, must be applied across-the-board to all basic telecommunications services. I therefore would find in favor of Consumer Advocate on Application For Rehearing issue 3 and Tariff Objection issue 1.

/s/ Susan J. Frye

DISSENT IN PART AND CONCURRENCE IN PART OF BOARD MEMBER

DIANE MUNNS

I respectfully dissent from the Board's decision on Applications For Rehearing issue 2, regarding the GDPPI prescribed by the Qwest price plan. I find that the language of the plan is explicit concerning which published version of the GDPPI is to be used to calculate the inflation factor. The plan states in section III D that "The inflation rate shall be the annual percentage change (the value of the index in the most recent quarter divided by the value of the index for the quarter in the previous year minus one) in the Gross Domestic Product Price Index (GDPPI) constructed using chain-type annual weights as published in the most recently available monthly edition of the U.S. Department of Commerce's Survey of Current Business, Table 7.1. The only full "monthly edition" of the Survey of Current Business (Survey) published by the Department of Commerce is the one printed first in hard copy and then published in total on the website. The most recently available monthly edition of the Survey prior to November 7, 1999, the anniversary of the price plan, is the one sent to the printer on October 13, 1999. This is the Survey that is required by the express terms of the price plan and from which the inflation rate is to be calculated. I would find that the inflation rate for Qwest for 1999 was 1.41 percent using the October 13 1999, monthly edition of the Survey.

I believe the majority has allowed the change in the base year from 1992 to 1996 in the October 29, 1999, website Table 7.1 to override the plain language of the

plan. The evidence is clear that even though Table 7.1 and some selected articles from the Survey are published on the website on October 29, 1999, the full monthly edition is not sent to the printer until after November 7, 1999, and that Table 7.1 was not published in the November monthly edition of the Survey. I have no reason to question the accuracy of the information from the website. However, it is not the source specified in the plan. Based upon this evidence I dissent from the majority decision on this issue.

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 10th day of May, 2001.